

## Offices of the Insurance Commissioner

Michael D. Rilev **Insurance Commissioner** 

## **MARCH 2013**

## WEST VIRGINIA INFORMATIONAL LETTER

## NO. 185

All Health Maintenance Organizations Licensed to do Business in the State TO: of West Virginia and Interested Medical Providers

**Infertility Services – Minimum Benefits** RE:

This letter is intended to clarify minimum benefits that a health maintenance organization ("HMO") is required to offer or otherwise make available to its enrollees with respect to infertility services. Clarification of the minimum benefits for infertility services is also expected to assist in the calculation of premium tax credits available pursuant to section 1401 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended.<sup>1</sup>

West Virginia Code § 33-25A-2(11) defines an HMO as "a public or private organization which provides, or otherwise makes available to enrollees, health care services, including at a minimum basic health care services[.]"2 Included among the mandated basic health care services, which are itemized at W. Va. Code § 33-25A-2(1), are "infertility services."

For the purposes of this letter and W. Va. Code § 33-25A-2(1), infertility services mean diagnostic and/or exploratory procedures to establish a diagnosis of infertility and identify the cause. Infertility services do not include the treatment of infertility, which may consist of, but not be limited to, ovulation induction, intrauterine insemination, invitro fertilization, uterine embryo lavage, embryo transfer, gamete intra-fallopian transfer, zygote intra-fallopian transfer and low tubal ovum transfer.



<sup>&</sup>lt;sup>1</sup> Section 1401 of the Patient Protection and Affordable Care Act created section 36B of the Internal Revenue Code (26 U.S.C. 36B), which provides for a premium tax credit that is available on an advanced basis to reduce the monthly insurance costs for eligible individuals who enroll in a qualified health plan through an approved health insurance exchange. Because infertility services mandated by W. Va. Code § 33-25A-2(1) are part of West Virginia's "state-required benefits enacted on or before December 31, 2011," an approved health insurance exchange must regard infertility services as an essential health benefit subject to the premium tax credit. See 45 CFR 155.

<sup>&</sup>lt;sup>2</sup> W. Va. Code § 33-25A-18(1)(c) allows the Insurance Commissioner to suspend or revoke an HMO's certificate of authority if the HMO fails to provide or arrange for basic health care services.

Nothing in this letter shall be construed to deny or restrict any existing right or benefit to coverage and treatment of infertility under an existing plan or policy. In addition, nothing in this letter shall be construed to prohibit an HMO from offering coverage for infertility services in excess of the required minimum benefits set forth herein.

Questions regarding this informational letter should be directed to Jeremiah Samples, Director of Health Policy for the OIC, at 304-558-6279 ext. 1131 or jeremiah.samples@wvinsurance.gov.

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Insurance Commissioner